

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 10**

WEATHER ONE SERVICES, LLC

Employer

and

Case 10-RD-1418

JAMES J. BREWER, AN INDIVIDUAL

Petitioner

LOCAL 100, SERVICE EMPLOYEES INTERNATIONAL UNION<sup>1</sup>

Union

**REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION**

The Employer, Weather One Services, LLC, is a limited liability company engaged in the business of providing weather forecasting at various airports throughout the United States, including Savannah, Georgia, where it employs about eight weather observers and lead observers/station managers. The Petitioner, James J. Brewer, an individual, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act, and amended that petition at the hearing, seeking to decertify the duly designated collective bargaining representatives of all full-time, part-time and relief weather observers and lead observers/station managers employed by the Employer at its Savannah, Georgia facility.

The sole issue in this case is whether the processing of the petition is barred by an outstanding collective bargaining agreement. As discussed below, I have concluded that there is no contract bar in this case. Accordingly, I have directed an election in the appropriate unit that consists of approximately eight employees.

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<sup>1</sup> The name of the Union appears as consistent with the record evidence. Although the Union was served with a copy of the Notice of Hearing, it did not appear at the hearing.

## **I. CONTRACT BAR**

The Employer and the Union are parties to an extant collective bargaining agreement that is effective from October 1, 2001 through September 30, 2004. Although the Employer has operated under the terms of the agreement, no evidence was presented to establish that the parties ever signed the agreement, or any other document(s) containing substantial terms and conditions of employment. Under such circumstances, the unsigned contract cannot serve as a bar to the processing of a petition, even though the parties may consider the contract properly concluded and its terms in effect. *De Paul Adult Care Communities*, 325 NLRB 681 (1998). Accordingly, I find that the instant petition is not barred by an existing collective bargaining agreement<sup>2</sup>.

Based upon the entire record in this matter<sup>3</sup> and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The labor organization involved is recognized as the collective bargaining representative for the unit in question. Accordingly, I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

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<sup>2</sup> The record reflects that there was a collective bargaining agreement in effect between the Union and the Employer's predecessor, Weather One Corporation. That contract was effective April 29, 1996 through October 29, 1999, with a year-to-year automatic renewal period unless either party requested renegotiation at least 60 days prior to the expiration of the contract. There was no evidence presented as to when or how this contract was terminated. Even under the effective dates of that contract, however, the petition in this case would have been timely filed.

<sup>3</sup> The Employer and the Petitioner waived the filing of a brief in this matter. The Union did not file a brief.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. I conclude that the unit sought by the Petitioner, which is co-extensive with the historically recognized unit, is appropriate for purposes of collective bargaining.

6. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time, part-time and relief weather observers and lead observers/station managers employed by the Employer at its Savannah, Georgia facility, but excluding all other employees, guards and supervisors, as defined in the Act.

### **III. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Local 100, Service Employees International Union. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

#### **A. Voting Eligibility**

Eligible to vote in the election are those in the units who are employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who

have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began; and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

**B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Suite 1000, Harris Tower, 233 Peachtree Street, N.E., Atlanta, Georgia 30303, on or before **October 24, 2003**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this

list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. This list may be submitted by facsimile transmission at (404) 331-2858. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

#### C. Notice Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non posting of the election notice.

#### IV. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, DC 20570-0001. This request must be received by the Board in Washington by 5:00 P.M., (EST) on **October 31, 2003**. The request may **not** be filed by facsimile.

Dated at Atlanta, Georgia, on this 17<sup>th</sup> day of October 2003.

/s/ Martin M. Arlook



Martin M. Arlook, Regional Director  
National Labor Relations Board  
Harris Tower – Suite 1000  
233 Peachtree St., N.E.

**Classification Index**  
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